IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

ST.Rev..No. 428 of 2006()

TA.306/2002 of STAT ADDL.BENCH, KOTTAYAM
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PETITIONER

M/S.THAMARAPALLY RUBBER CO.LTD.,
POST BOX NO.1, ANCHERIL BANK BUILDINGS,
KOTTAYAM-686 001, REPRESENTED BY ITS DIRECTOR,
SRI.G.J.ANCHERIL.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS

RESPONDENT:

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY (TAXES),
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

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S.T.REV.CASE NO 428/2006

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DATED THIS, THE 4TH DAY OF DECEMBER, 2006.

O R D E R

Raman, J.

The assessee purchases latex and after conversion as centrifuged latex, sells the same. The latex purchased by him is assessible to tax on the last purchase point under Section 5 of the Kerala General Sales Tax Act. The assessment relates to the year 1987-88, 1988-89 and 1989-90. The assessee claimed exemption in respect of purchase tax payable by him under Notification SRO 968/80. The assessee filed appeals relating to these assessment years, as T.A. Nos. 306, 307 & 308/2002 and t he Sales Tax Appellate Tribunal, by a common order dated 29th August, 2005, remanded the case on certain points to the assessing officer with which we are not concerned in this revision. However, on the claim for exemption, the tribunal held, interpreting SRO 968/80, that the said notification is clear in that it exempts only sales tax payable by an assessee. It is the contention of the petitioner that he becomes liable to pay purchase tax when he sales the goods after conversion, the purchase thus being the last

purchase and therefore entitled to the benefit of exemption. In **State of Kerala v. Vattukalam Chemicals Industries** (2001 (124) STC 233) the question arose for consideration before the apex court as to whether exemption from tax under notification SRO 499/90 is available in respect of the turnover of goods at the point of last purchase in the State. That was a case where the assessee had purchased copper scrap and converted into copper sulphate. There was no dispute that no tax is payable under Section 5 of the Act. This copper scrap purchased under the above situation, in the absence of liability for tax under Section 5 was consumed in the manufacture of copper sulphate and it was the copper sulphate which was the commodity for sale as far as the assessee was concerned. Therefore, it was crystal clear that the question is of assessment and levy under Section 5-A of the Act. The tribunal held that what has been given exemption in SRO 499/90 was the turnover of goods taxable at the point of last purchase in the State which were enumerated in the First Schedule of the K.G.S.T. Act. It was also observed that the turnover under Section 5-A was not mentioned in the notification . Taking the view that exemption notification has to be strictly interpreted, the authorities had declined to grant exemption to the assessee. The apex court restored the order of the Tribunal as aforesaid in the appeal filed by the State.

2. In the present case also, the notification is clear and nowhere in the notification there is mention of purchase tax. Levy of tax for the purpose of getting exemption as an SSI unit was restricted on the sales only. The point of levy of tax is point of last purchase under Section 5 of the Kerala General Sales Tax Act and not under Section 5A for the purpose of collection. As per the proceedings of the General Manager of the District Industries Centre, exemption is only on the turn over of sales. After perusing SRO 968/80 the tribunal held that exemption provided thereunder is only on the turnover of sale of goods produced and sold by the new industrial units. Being an exemption notification it requires strict interpretation. The view taken by the tribunal cannot be faulted. We find no merit in this revision. The same is dismissed.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

knc/-